

REMARKS

Claims 1, 5, 6 and 28-32 are pending in the application.

Claims 1, 5, 6 and 28-32 have been rejected.

Claim 1, 5, 6, 28, 29, 31 and 32 have been amended, as set forth herein.

Claim 30 has been canceled, without prejudice

New Claims 35-43 have been added.

I. **REJECTION UNDER 35 U.S.C. § 112**

Claim 5 was rejected under 35 U.S.C. § 112. Applicant has corrected the claim dependency. Accordingly, the Applicant respectfully requests withdrawal of the § 112 rejection of Claim 5.

II. **REJECTION UNDER 35 U.S.C. § 102**

Claims 28-30 were rejected under 35 U.S.C. § 102(b) as being anticipated by Altenburg (U.S. Patent No. 6,092,473). The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Independent Claim 28 has been amended to recite (in addition to the base wall, a front wall and two side walls) that the front wall includes (1) a first front outer wall and a second front outer wall each substantially parallel to the base wall, (2) a channel base wall substantially parallel to the base wall, (3) a first channel side wall extending between both the first front outer wall and the channel base wall, (4) a second channel side wall extending between both the second front outer wall and the channel base wall, (5) a first interior reinforcing wall and a second interior reinforcing wall, each of the first interior reinforcing wall and the second interior reinforcing wall extending between the base wall and the channel base wall, thereby forming at least a middle chamber and two side chambers, and (6) a distance between the first interior reinforcing wall and the second interior reinforcing wall is less than a distance between the first channel side wall and the second channel side wall.

Altenburg fails to disclose each and every element recited in amended independent Claim 28 (and dependent Claim 29). Claim 30 has been canceled, without prejudice.

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(b) rejection of Claims 28-29.

III. REJECTION UNDER 35 U.S.C. § 103

Claims 1, 5, 6, 31 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Altenburg (US 6,092,473) in view of Enduro Systems Durothread Fastener & Hanging Systems (“Enduro”). The rejection is respectfully traversed.

Independent Claim 28 has been amended, and Applicant has shown above that Altenburg fails to disclose one or more elements recited in Claim 28. In addition, the Enduro reference merely describes threaded bolts, nuts and washers made of non-metallic material. Thus, the Enduro reference fails to disclose, teach or suggest those elements missing from Altenburg. Therefore, independent Claim 28 and claims depending therefrom are not obvious in view of Altenburg and Enduro.

For similar reasons, Altenburg and Enduro fails to disclose, teach or suggest Applicant's claimed invention as recited in independent Claims 1 and 6 (and claims depending therefrom).

Independent Claim 1 has been amended to recite (1) a back wall having a first opening therethrough, (2) a front wall having a channel formed therein and extending from a first end of the wale to a second end of the wale (with a second opening therein), where the front wall includes (i) a first front outer wall and a second front outer wall each substantially parallel to the base wall, (ii) a channel base wall substantially parallel to said base wall, (iii) a first channel side wall extending between both said first front outer wall and said channel base wall, and (iv) a second channel side wall extending between both said second front outer wall and said channel base wall, and (3) a first interior reinforcing wall and a second interior reinforcing wall connecting said back wall and said front wall to form a middle and two side chambers between said back wall and said front wall, and wherein the middle and two side chambers extend from the first end of the wale to the second end of the wale.

Independent Claim 6 has been amended to recite (1) a back wall, (2) a front wall having a top portion and a bottom portion interconnected by a C-shaped channel portion extending from a first end of the wale to a second end of the wale, said top and bottom portions substantially parallel to said back wall, and said C-shaped channel portion including a channel bottom portion, a first channel side portion and a second channel side portion, (3) a top wall connecting said back wall to said top portion, (4) a bottom wall connecting said back wall to said bottom portion to form a chamber between said back wall and said front wall, and (5) an upper reinforcing wall and a lower reinforcing wall each connecting said back wall to said channel bottom portion of said C-shaped channel portion such that at least three chambers are formed between said back wall and said front wall and extending from the first end of the wale to the second end of the wale.

Accordingly, the Applicant respectfully requests withdrawal of the § 103(a) rejection of Claims 1, 5, 6, 31 and 32.

IV. NEW CLAIMS 35-43

New Claims 35-43 have been added. New Claim 35 is a new independent claim, and new Claims 36-41 depend directly or indirectly therefrom. New dependent Claim 42 depends from independent Claim 1, while new dependent Claim 43 depends from independent Claim 6.

Independent Claim 35 recites the following, with emphasis underlining:

35. (New) A wale for use in bracing a retaining wall, said wale comprising:
a base wall, a front wall, a first side wall and a second side wall, each of the first side wall and the second side wall extending between both the base wall and the front wall;
wherein the front wall includes a channel formed therein, and the front wall comprises:

a first front outer wall and a second front outer wall each substantially parallel to the base wall,
a channel base wall substantially parallel to the base wall,
a first channel side wall extending between both the first front outer wall and the channel base wall, and
a second channel side wall extending between both the second front outer wall and the channel base wall; and
a first interior reinforcing wall and a second interior reinforcing wall, each of the first interior reinforcing wall and the second interior reinforcing wall extending between the base wall and the channel base wall, thereby forming a first chamber.

Altenburg does not appear to disclose, teach or suggest each and every element of Applicant's wale as set forth in the arrangement in Claim 35. Therefore, Applicant respectfully submits that independent Claim 35 and claims depending therefrom are allowable over the art of record.

V. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@munckbutrus.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Butrus Deposit Account No. 50-0208.

Respectfully submitted,

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